

REMARKS

The present Amendment responds to the Office Action dated June 21, 2006. Concurrently filed herewith is a petition for a one-month extension of the period in which to respond, to expire August 21, 2006.

Traversal of Restriction Requirement

In the Office Action, the examiner restricted the claims into three groups:

- I. Claims 1 – 21, directed to a dough dispensing machine
- II. Claims 22 – 40, directed to a system for dispensing dough
- III. Claims 41 and 42, directed to a process for preparing dough

The examiner argued that the inventions were distinct on the grounds that the process/method can be practiced by another and materially different apparatus without the specifics of the Group I and II apparatus.

The applicant respectfully requests reconsideration of the restriction.

The applicant submits that the restriction at best should be two groups: claims 1 – 40 and claims 41 and 42. As noted by the examiner, the limitations or “specifics” of the apparatus subject matter of claims in Groups I and II are similar (both classified in class 221 although the examiner contends different sub-classes.) In contrast, and as noted by the examiner, the limitations or

“specifics” of the process limitations of Group III differ from that of Groups I and II in terms of the structure and the process steps of those Groups.

The limitations or “specifics” of the subject matter of the claims in Groups I and II are similar. The limitations in Group I express the claimed apparatus in terms of the structure. The limitations in Group II express in structural / functional terms the steps accomplished by the structure of the apparatus. It is proper to define some part of an invention in functional terms. Indeed, a functional limitation defines something by what it does, rather than by what it is (e.g., as evidenced by its specific structure.) A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element to define a particular capability or purpose that is served by the recited element. See MPEP § 2173.05 (g). Functional limitations serve to precisely define structural attributes; for example, “members adapted to be positioned” defines “interrelated components of a claimed assembly. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976). A search for the apparatus of claims 1 – 21 is the same as that for the “system” of claims 22 – 40 that express in structural / functional terms the steps accomplished by the structure of the apparatus. Such search for either Group I or Group II will necessitate a search of the two subclasses 175 and 303 of class 221.

Accordingly, the applicant submits that Groups I and II should be grouped together for examination of claims 1 – 40 while Group III with claims 41 and 42 remains restricted.

Election In Response To Restriction (And Contingency Election)

The applicant elects for prosecution the claims 1 – 40 of Groups I and II for the reasons set forth above in the traverse of the rejection, and claims 41 and 42 of Group III are withdrawn as directed to a non-elected invention.

In the alternative, and as a contingency only in the event that the examiner maintains the restriction as originally stated in the Office Action, the applicant elects the claims of Group I.

Amendments To The Claims

The amendments to the claims conform the preamble of the dependent claims to US practice by changing the indefinite article introducing the preamble to a definite article, for purposes of clarification. Also, the preambles of claims 12 – 21 are amended to conform to the preamble of claim 1, for consistency.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl M. Davis II', with a stylized flourish at the end.

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